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No. 989

In the Supreme Court of the United States

OCTOBER TERM, 194[illegible]

WOODROW WILSON [illegible], PETITIONER

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 983

WOODROW WILSON TILGHMAN, PETITIONER
v.
UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 174–175) is reported at 146 F. 2d 644.

JURISDICTION

The judgment of the circuit court of appeals was entered December 18, 1944 (R. 175), and a petition for rehearing (R. 176–182) was denied January 22, 1945 (R. 183). The petition for a writ of certiorari was filed February 26, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the evidence was sufficient to permit the jury to find that petitioner transported a woman in interstate commerce for the purpose of prostitution.

STATUTE INVOLVED

Section 2 of the Act of June 25, 1910, c. 395, 36 Stat. 825, 18 U. S. C. 398, known as the Mann Act, provides in part:

> That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; * * * shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

STATEMENT

On May 8, 1944, petitioner was indicted in the District Court for the Northern District of Texas in two counts charging violations of Section 2 of the Mann Act, *supra,* in that on January 10, 1943, and again on February 19, 1944, he transported and caused to be transported one Bernice Louise Williams in interstate commerce from Oklahoma City, Oklahoma, to Dallas, Texas, for the purpose of prostitution (R. 1–3). After a jury trial, petitioner was acquitted on the first count but convicted on the second (R. 3), which charged the transportation on February 19, 1944, and he was sentenced to imprisonment for 5 years (R. 4–5). On appeal to the Circuit Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed (R. 175).

The evidence adduced at petitioner's trial may be summarized as follows:

Mrs. Bonnie Marshall was the lessee of the Melba Hotel in Dallas, Texas, which she operated as a house of prostitution (R. 81, 82, 88). Mrs. Marshall testified that she first met petitioner in January 1943, at which time he asked her whether she needed any more girls (R. 82–83). As a result of the conversation, petitioner returned a few days later with Bernice Louise Williams, whom Mrs. Marshall knew under the name of "Nancy Barton," and it was agreed that Bernice would work as a prostitute out of the Melba Hotel, which she did for about six months (R. 83–84). In November 1943 conditions in Dallas became unfavorable for Mrs. Marshall's business, "it was getting pretty hot," and she told petitioner that she was going to "close up"; petitioner responded that he would take Bernice and return to Oklahoma City (R. 84). Some time later Mrs. Marshall received a telegram from Oklahoma City signed "Nancy," and in February 1944 petitioner and Bernice reappeared at her place. The arrangements for this trip had been made by petitioner (R. 33, 34; see also R. 79–80). Petitioner asked Mrs. Marshall whether Bernice could return to work, i. e., "hustling," which Bernice did for about three weeks. (R. 85–86.)

John T. Ludey, an agent of the Federal Bureau of Investigation, interviewed petitioner upon his arrest by the Dallas police in March 1944 (R. 16, 24). Ludey testified that at this interview petitioner stated that he had been released from the penitentiary in December 1942 and that since that time he had been employed for only two weeks (R. 57); that he became acquainted with Bernice in Oklahoma City in January 1943 and about a week later they arranged to go to Dallas (R. 25, 29); that after they arrived in Dallas, Bernice practiced prostitution (R. 31); that he and Bernice returned to Oklahoma City in November 1943, but Bernice did not practice prostitution there; that they returned to Dallas in February 1944, but he preceded Bernice on this trip by a day or so, because he knew of the "Mann Act, or the White Slave Traffic Act, and that he did not travel with her"; and that Bernice resumed the practice of prostitution upon their return to Dallas (R. 31–34).[1] At the close of the Government's case, petitioner's motion for "an instructed verdict" was denied (R. 93).

Testifying in his own defense, petitioner stated that he met Bernice in Oklahoma City in February 1943, but that he knew nothing about her past activities as a prostitute (R. 106, 111–112). He later decided to go to Dallas in order to make a new start after his release from prison (R. 105). After he arrived in Dallas, he met Bernice purely through chance, and she told him that she had been searching for him (R. 107–108). They then began to live together as man and wife (R. 109). Petitioner was not employed, but supported himself and Bernice on some money he had, and he augmented his income by gambling (R. 111, 115, 116, 127, 130). Several months after he and Bernice began to live together, Bernice admitted to him that she had been a prostitute, but stated that since she had been living with him, she had not practiced prostitution (R. 112). They later returned to Oklahoma City in order to visit their relatives, and then went back to Dallas because he had obtained a position there as a salesman for a roofing concern (R. 118–120). Petitioner stated that the reason he and Bernice did not return to Dallas together was that he had a "free ride" and Bernice was awaiting the completion of some clothing (R. 137–138).

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[1] Another F. B. I. agent, who was present at the interview between petitioner and Ludey, testified for the Government in rebuttal in corroboration of Ludey's account of the statements made by petitioner (see R. 152–155).

Petitioner denied that he had ever made any proposition to Mrs. Marshall concerning Bernice and stated that he did not even know Mrs. Marshall (R. 104–105, 115). He also denied that he had made the statements attributed to him by Ludey (R. 113–114, 134). He testified that he married Bernice after the indictment had been returned (R. 121, 123), and admitted that he had been previously convicted of manslaughter and burglary (R. 96, 101).

The trial court charged the jury, *inter alia,* that before they could convict petitioner they were required to find that the Government had proved beyond a reasonable doubt that he transported Bernice for the purpose of practicing prostitution (R. 168; see also R. 167). Counsel for petitioner did not request any further charge (see R. 170).

ARGUMENT

Relying upon *Mortensen* v. *United States,* 322 U. S. 369, petitioner contends (Pet. 3, 4–5, 13–18) that there was not sufficient evidence upon which the jury could find that he transported Bernice for the purpose of prostitution on February 19, 1944.[2] We think it is apparent, however, from the evidence adduced by the Government, *supra*, pp. 3–5, that the *Mortensen* decision has no application. Upon the basis of Mrs. Marshall's testimony and petitioner's admissions to the F. B. I. agents, the jury was clearly justified in finding that he transported or caused Bernice to be transported from Oklahoma City to Dallas in February 1944 for the dominant and, indeed, sole purpose of having her resume in Dallas her activities as a prostitute, which had been interrupted by the intervention of adverse conditions at the house of prostitution where she had previously worked (see pp. 3–4, *supra*). That transportation was not, as in the *Mortensen* case, merely the return portion of an innocent interstate round trip. See also *Oriolo* v. *United States*, No. 727, this Term decided February 26, 1945. The earlier trip from Dallas to Oklahoma City in November 1943 was occasioned, as the evidence shows, by the circumstance that it was getting "hot" in Dallas and was wholly unrelated, both in time and purpose, to the transportation to Dallas in February 1944, when, apparently, petitioner and Bernice determined that it would be advantageous to return to Dallas. There was not here any single, innocent purpose pervading these disconnected trips. From the evidence before the jury, it was entitled to find, we submit, that the transportation to Dallas was undertaken by petitioner for the purpose of, or as a means of effecting or facilitating, Bernice's activity as a prostitute.

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[2] It may be observed that the record does not disclose, as petitioner claims (Pet. 11), that at the close of all the evidence he renewed his motion for an "instructed verdict" (see R. 165).

CONCLUSION

The case is not controlled by *Mortensen* v. *United States,* and was correctly decided below. We respectfully submit, therefore, that the petition for a writ of certiorari should be denied.

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March 1945.

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